



February 21, 2014

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## ENGROSSED SENATE BILL No. 53

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DIGEST OF SB 53 (Updated February 19, 2014 5:33 pm - DI 69)

**Citations Affected:** IC 8-1.5; IC 34-57; IC 36-4; IC 36-9.

**Synopsis:** Municipal sewer bills and utilities. Provides that for purposes of the statutes governing municipal sewage works, the municipal legislative body may adopt an ordinance to provide for one or more of the following with respect to property occupied by someone other than the owner of the property: (1) That sewer fees for the property are payable by the person occupying the property. (2) That sewer fees for the property are payable by the person occupying the property only if the property owner or the person occupying the property gives the municipal sewer utility written notice that indicates, or the utility's records for the property otherwise indicate, that the person occupying the property is responsible for paying the fees. (3) That sewer fees for the property do not constitute a lien against the property, subject to certain requirements or conditions that the municipal legislative body may set forth in the ordinance. Makes conforming amendments to provisions setting forth the manner in which municipal sewer liens attach and are enforced. For purposes of the statutes governing municipal storm water works and municipal sewage works, amends provisions requiring notice of fee delinquencies  
(Continued next page)

**Effective:** July 1, 2014.

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### Zakas, Broden, Breaux

(HOUSE SPONSORS — CULVER, NEESE, KOCH, BURTON)

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January 7, 2014, read first time and referred to Committee on Utilities.  
January 24, 2014, reported favorably — Do Pass.  
January 27, 2014, read second time, ordered engrossed.  
January 28, 2014, engrossed. Read third time, passed. Yeas 45, nays 4.

#### HOUSE ACTION

February 10, 2014, read first time and referred to Committee on Environmental Affairs.  
February 20, 2014, amended, reported — Do Pass.

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ES 53—LS 6202/DI 101



to the owner of tenant-occupied property to provide that the notice of the delinquency must be sent to the owner: (1) regardless of whether the owner has provided an address to which the notice must be sent; and (2) at the last address of the owner as indicated in the records of the county auditor, or to another address specified by the owner, in a written notice to the municipal storm water department or sewer utility, at which the owner requests to receive a notice of delinquency. Provides that for purposes of the provision that allows a municipality owning a municipal sewage works to adopt an ordinance to provide that sewer fees for tenant-occupied property are payable by the tenant only if the property owner or the tenant gives the municipal sewer utility written notice that indicates, or the utility's records for the property otherwise indicate, that the tenant is responsible for paying the fees, a document (rather than a rental agreement, a lease, or a contract) that includes certain information qualifies for purposes of the required notice. Provides that, in a situation in which a municipal utility is providing services to properties located outside the municipality under contracts that provide for the owners of the properties to make payments in lieu of annexation, if the contracts expire, the municipal utility may not terminate services to the properties and, as a condition of continuing to receive services, the owners of the properties must continue paying the rate for the services provided for in the expired contracts, for two years or until: (1) the municipal utility and the owners of the properties enter into new contracts; (2) the area in which the properties are located is annexed into the municipality; or (3) the matter is submitted to arbitration. Specifies that, in an arbitration proceeding, the award made by the arbitrator must establish reasonable and just terms of a new contract between the municipal utility and the owners of the properties, considering all relevant factors, and that if either party fails or refuses to enter into a new contract according to the terms of the arbitration award, the other party may commence legal action to enforce the award.



February 21, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## ENGROSSED SENATE BILL No. 53

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A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 8-1.5-5-29, AS ADDED BY P.L.131-2005,  
2       SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2014]: Sec. 29. (a) Subsections (c), (d), and (e) do not apply  
4       to a city that before January 1, 2005, adopted an ordinance establishing  
5       procedures for the collection of unpaid user fees under this chapter  
6       through the enforcement of a lien.  
7       (b) Fees assessed against real property under this chapter constitute  
8       a lien against the property assessed. The lien is superior to all other  
9       liens except tax liens. Except as provided in subsections (c) and (d), the  
10      lien attaches when notice of the lien is filed in the county recorder's  
11      office under section 30 of this chapter.  
12      (c) A fee is not enforceable as a lien against a subsequent owner of  
13      property unless the lien for the fee was recorded with the county  
14      recorder before the conveyance to the subsequent owner. If property is  
15      conveyed before a lien is filed, the department shall notify the person  
16      who owned the property at the time the fee became payable. The notice

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1 must inform the person that payment, including penalty fees for  
 2 delinquencies, is due not more than fifteen (15) days after the date of  
 3 the notice. If payment is not received within one hundred eighty (180)  
 4 days after the date of the notice, the amount due may be expensed as a  
 5 bad debt loss.

6 (d) A lien attaches against real property occupied by someone other  
 7 than the owner only if the department notifies the owner ~~within not~~  
 8 **later than** twenty (20) days after the time the user fees ~~became~~ **become**  
 9 sixty (60) days delinquent. ~~However, the department must give notice~~  
 10 ~~to the owner only if the owner has given the department written notice~~  
 11 ~~of the address to which to send notice. A notice sent to the owner~~  
 12 **under this subsection must be sent by certified mail, return receipt**  
 13 **requested, or an equivalent service permitted under IC 1-1-7-1 to:**

14 (1) the owner of record of real property with a single owner;

15 or

16 (2) at least one (1) of the owners of real property with multiple  
 17 owners;

18 **at the last address of the owner for the property as indicated in the**  
 19 **records of the county auditor on the date of the notice of the**  
 20 **delinquency, or to another address specified by the owner, in a**  
 21 **written notice to the department, at which the owner requests to**  
 22 **receive a notice of delinquency under this subsection.**

23 (e) The department shall release:

24 (1) liens filed with the county recorder after the recorded date of  
 25 conveyance of the property; and

26 (2) delinquent fees incurred by the seller;

27 upon receipt of a verified demand in writing from the purchaser. The  
 28 demand must state that the delinquent fees were not incurred by the  
 29 purchaser as a user, lessee, or previous owner and that the purchaser  
 30 has not been paid by the seller for the delinquent fees.

31 SECTION 2. IC 8-1.5-5-30, AS ADDED BY P.L.131-2005,  
 32 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 33 JULY 1, 2014]: Sec. 30. (a) The board may defer enforcing the  
 34 collection of unpaid fees and penalties assessed under this chapter until  
 35 the unpaid fees and penalties have been due and unpaid for at least  
 36 ninety (90) days. **However, in the case of property that is occupied**  
 37 **by someone other than the owner, this subsection does not relieve**  
 38 **the department of its duty under section 29(d) of this chapter to**  
 39 **notify the owner not later than twenty (20) days after the time user**  
 40 **fees become sixty (60) days delinquent.**

41 (b) Except as provided in subsection (k), the board shall enforce  
 42 payment of fees imposed under this chapter. As often as the board



determines necessary in a calendar year, the board shall prepare either of the following:

(1) A list of the delinquent fees and penalties that are enforceable under this section. The list must include the following:

(A) The name of the owner of each lot or parcel of real property on which fees are delinquent.

(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(c) An officer of the board shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall mail by certified mail, or by another delivery service providing proof of delivery, to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. A service charge of five dollars (\$5), which is in addition to the recording fee charged under this subsection and under subsection (e), shall be added to each delinquent fee that is recorded.

(d) Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the board shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection (c), certify to the county auditor a list of the **unpaid** liens ~~that remain unpaid~~ for collection ~~in with~~ the next May **installment of property taxes**. The county and its officers and employees are not liable for any material error in the information on this list.

(e) The board shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

(f) Upon receipt of the list under subsection (c), the county auditor of each county shall add a fifteen dollar (\$15) certification fee for each lot or parcel of real property on which fees are delinquent. The fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the district the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next May installment of property taxes. The county treasurer shall include any unpaid charges for the delinquent fee, penalty, service charge, recording fee,



and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

(g) After certification of liens under subsection (d), the board may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor.

(h) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

(i) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the district. The county treasurer shall retain the service charges and certification fees that have been collected and shall deposit them in the county general fund.

(j) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 29(e) of this chapter, files a verified demand with the county auditor.

(k) A board may write off a fee or penalty under subsection (a) that is less than forty dollars (\$40).

SECTION 3. IC 34-57-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. This chapter applies to:

(1) any controversy existing between two (2) or more parties which might be the subject of a suit at law, except as otherwise provided in section 2 of this chapter; **and**

**(2) arbitration under IC 36-4-3-21.1 concerning services provided by a municipal utility to properties located outside the corporate boundaries of the municipality.**

SECTION 4. IC 36-4-3-21.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 21.1. (a) This section applies if:**

**(1) one (1) or more contracts were entered into under section 21(a)(1) of this chapter between:**

**(A) the executive and an administrative agency of a municipality; and**

**(B) the owners or lessees of properties located outside the corporate boundaries of the municipality;**

**concerning the provision of municipal utility services in the**



1 area in which the properties referred to in clause (B) are  
2 located;

3 (2) the contracts have expired;

4 (3) the area in which the properties referred to in subdivision  
5 (1)(B) are located has not been annexed into the municipality;  
6 and

7 (4) the parties have not agreed:

8 (A) to an extension of the contracts referred to in  
9 subdivision (1); or

10 (B) to enter into new contracts under section 21(a)(1) of  
11 this chapter.

12 (b) In a situation described in subsection (a):

13 (1) municipal utility services to the properties referred to in  
14 subsection (a)(1)(B) may not be terminated, except for  
15 nonpayment of the compensation due under subdivision (2);  
16 and

17 (2) as a condition of continuing to receive municipal utility  
18 services, the owners or lessees of the properties referred to in  
19 subsection (a)(1)(B) must continue to pay the rate charged for  
20 the municipal utility services under the expired contracts,  
21 including any payment or contribution of money to the  
22 municipality provided for in the expired contracts under  
23 section 21(a) of this chapter;

24 for the period specified in subsection (c)(1) or until the occurrence  
25 of one (1) of the events set forth in subsection (c)(2).

26 (c) The municipal utility services shall continue to be provided  
27 to the properties referred to in subsection (a)(1)(B) under the terms  
28 set forth in subsection (b):

29 (1) for a period of two (2) years from the date of expiration of  
30 the contracts, if none of the events set forth in subdivision

31 (2)(A) through (2)(C) occurs within that period; or

32 (2) until one (1) of the following occurs:

33 (A) The executive and administrative agency of the  
34 municipality and the owners or lessees of the properties  
35 referred to in subsection (a)(1)(B) enter into a new contract  
36 under section 21(a)(1) of this chapter.

37 (B) The area in which the properties referred to in  
38 subsection (a)(1)(B) are located is annexed into the  
39 municipality.

40 (C) Subject to subsection (e), arbitration of the matter is  
41 initiated under subsection (d).

42 (d) At any time within the period referred to in subsection



1 (c)(1):

2 (1) the executive and administrative agency of the  
3 municipality; and

4 (2) the owners or lessees of the properties referred to in  
5 subsection (a)(1)(B);

6 may initiate arbitration of the differences preventing the parties  
7 from entering into a new contract under section 21(a)(1) of this  
8 chapter. The arbitration shall be conducted under IC 34-57-1 by an  
9 arbitrator mutually chosen by the parties, and the award made by  
10 the arbitrator must establish reasonable and just terms of a new  
11 contract between the parties under section 21(a)(1) of this chapter,  
12 considering all relevant factors. If either party fails or refuses to  
13 enter into a new contract under section 21(a)(1) of this chapter  
14 according to the terms of the award, the other party may  
15 commence legal action to enforce the award under IC 34-57-1-13.

16 (e) If arbitration is initiated under subsection (d) before the  
17 expiration of the period referred to in subsection (c)(1), but the  
18 arbitration is not concluded before the expiration of the period set  
19 forth in subsection (c)(1), the municipal utility services shall  
20 continue to be provided to the properties referred to in subsection  
21 (a)(1)(B) under the terms set forth in subsection (b) until the  
22 arbitrator makes the award and the parties enter into a new  
23 contract under section 21(a)(1) of this chapter according to the  
24 terms of the award.

25 SECTION 5. IC 36-9-23-25, AS AMENDED BY P.L.114-2008,  
26 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2014]: Sec. 25. (a) Subject to section 37 of this chapter, the  
28 municipal legislative body shall, by ordinance, establish just and  
29 equitable fees for the services rendered by the sewage works, and  
30 provide the dates on which the fees are due.

31 (b) Just and equitable fees are the fees required to maintain the  
32 sewage works in the sound physical and financial condition necessary  
33 to render adequate and efficient service. The fees must be sufficient to:

34 (1) pay all expenses incidental to the operation of the works,  
35 including legal expenses, maintenance costs, operating charges,  
36 repairs, lease rentals, and interest charges on bonds or other  
37 obligations;

38 (2) provide the sinking fund required by section 21 of this  
39 chapter;

40 (3) provide adequate money to be used as working capital; and

41 (4) provide adequate money for improving and replacing the  
42 works.





Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(c) **Except as otherwise provided in an ordinance described in subsection (f)**, the fees are payable by the owner of each lot, parcel of real property, or building that:

(1) is connected with the sewage works by or through any part of the municipal sewer system; or

(2) uses or is served by the works.

Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed and collected accordingly.

(d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

(1) A flat charge for each sewer connection.

(2) The amount of water used on the property.

(3) The number and size of water outlets on the property.

(4) The amount, strength, or character of sewage discharged into the sewers.

(5) The size of sewer connections.

(6) Whether the property has been or will be required to pay separately for any part of the sewage works.

(7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of ~~his~~ **the owner's** property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.

(8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.

(9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.

(10) Any other factors the legislative body considers necessary.

Fees collected under subdivision (8) may be spent for that purpose only after compliance with all provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may transfer fees collected in lieu of taxes under subdivision (9) to the general fund of the municipality.



(e) The municipal legislative body may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on variations in:

- (1) the costs, including capital expenditures, of furnishing services to various classes of users or to various locations; or
- (2) the number of users in various locations.

**(f) The municipal legislative body may adopt an ordinance under this chapter to provide for one (1) or more of the following with respect to property occupied by someone other than the owner of the property:**

**(1) That fees for the services rendered by the sewage works to the property are payable by the person occupying the property. At the option of the municipal legislative body, the ordinance may include any:**

- (A) requirement for a deposit to ensure payment of the fees by the person occupying the property; or**
- (B) other requirement to ensure the creditworthiness of the person occupying the property as the account holder or customer with respect to the property;**

**that the municipal legislative body may lawfully impose.**

**(2) That the fees for the services rendered by the sewage works to the property are payable by the person occupying the property only if one (1) of the following conditions is satisfied:**

**(A) Either the property owner or the person occupying the property gives to the general office of the utility written notice that indicates that the person occupying the property is responsible for paying the fees with respect to the property and requests that the account or other customer or billing records maintained for the property be in the name of the person occupying the property. At the option of the municipal legislative body, the ordinance may provide that a document that:**

- (i) is executed by the property owner and the person occupying the property;**
- (ii) identifies the person occupying the property by name; and**
- (iii) indicates that the person occupying the property is responsible for paying the fees assessed by the utility with respect to the property;**

**serves as written notice for purposes of this clause.**

**(B) The account or other customer or billing records**



maintained by the utility for the property otherwise indicate that:

(i) the property is occupied by someone other than the owner; and

(ii) the person occupying the property is responsible for paying the fees.

(3) That fees assessed against the property for the services rendered by the sewage works to the property do not constitute a lien against the property, notwithstanding section 32 of this chapter, and subject to any requirements or conditions set forth in the ordinance under subdivision (1) or (2).

SECTION 6. IC 36-9-23-32, AS AMENDED BY P.L.113-2010, SECTION 153, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 32. (a) **Except as otherwise provided in an ordinance described in section 25(f) of this chapter,** fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 (**repealed September 1, 1981**) constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not more than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) **Except as otherwise provided in an ordinance described in section 25(f) of this chapter,** a lien attaches against real property occupied by someone other than the owner only if the utility ~~notified~~ **notifies** the owner ~~within not later than~~ twenty (20) days after the time the utility fees ~~became~~ **become** sixty (60) days delinquent. ~~However, the utility is required to give notice to the owner if the owner has given the general office of the utility written notice of the address to which the owner's notice is to be sent.~~ A notice sent to the owner under this subsection must be sent by certified mail, return receipt requested, or an equivalent service permitted under IC 1-1-7-1 to:



- 1 (1) the owner of record of real property with a single owner; or  
 2 (2) at least one (1) of the owners of real property with multiple  
 3 owners;

4 at the last address of the owner for the property as indicated in the  
 5 records of the county auditor on the date of the notice **of the**  
 6 **delinquency, or to another address specified by the owner, in a**  
 7 **written notice to the utility, at which the owner requests to receive**  
 8 **a notice of delinquency under this subsection.** The cost of sending  
 9 notice under this subsection is an administrative cost that may be billed  
 10 to the owner.

11 (d) The municipality shall release:

- 12 (1) liens filed with the county recorder after the recorded date of  
 13 conveyance of the property; and  
 14 (2) delinquent fees incurred by the seller;

15 upon receipt of a verified demand in writing from the purchaser. The  
 16 demand must state that the delinquent fees were not incurred by the  
 17 purchaser as a user, lessee, or previous owner, and that the purchaser  
 18 has not been paid by the seller for the delinquent fees.

19 SECTION 7. IC 36-9-23-33, AS AMENDED BY P.L.39-2008,  
 20 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 21 JULY 1, 2014]: Sec. 33. **(a) Subsections (c) through (l) do not apply**  
 22 **to unpaid fees and penalties assessed against property occupied by**  
 23 **someone other than the property owner if:**

- 24 **(1) the municipal legislative body has adopted an ordinance**  
 25 **described in section 25(f) of this chapter concerning property**  
 26 **occupied by someone other than the property owner;**  
 27 **(2) the ordinance described in section 25(f) of this chapter**  
 28 **provides that fees assessed against the property for services**  
 29 **rendered by the sewage works to the property do not**  
 30 **constitute a lien against the property, as authorized under**  
 31 **section 25(f)(3) of this chapter; and**  
 32 **(3) any requirements or conditions:**  
 33 **(A) described in section 25(f)(1) or 25(f)(2) of this chapter;**  
 34 **and**  
 35 **(B) included in the ordinance;**  
 36 **have been satisfied.**

37 ~~(a)~~ **(b)** An officer described in subsection ~~(b)~~ **(c)** may defer  
 38 enforcing the collection of unpaid fees and penalties assessed under  
 39 this chapter until the unpaid fees and penalties have been due and  
 40 unpaid for at least ninety (90) days. **However, in the case of property**  
 41 **that is occupied by someone other than the owner, this subsection**  
 42 **does not relieve the utility of its duty under section 32(c) of this**



chapter to notify the owner not later than twenty (20) days after the time user fees become sixty (60) days delinquent.

~~(b)~~ (c) Except as provided in subsection ~~(f)~~, (m), the officer charged with the collection of fees and penalties assessed under this chapter shall enforce their payment. As often as the officer determines is necessary in a calendar year, the officer shall prepare either of the following:

(1) A list of the delinquent fees and penalties that are enforceable under this section, which must include the following:

(A) The name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent.

(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

~~(e)~~ (d) The officer shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall then mail to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. Except for a county having a consolidated city, a service charge of five dollars (\$5), which is in addition to the recording fee charged under this subsection and under subsection ~~(f)~~, (g), shall be added to each delinquent fee that is recorded.

~~(d)~~ (e) This subsection applies only to a county containing a consolidated city. Using the lists and instruments prepared under subsection ~~(b)~~ (c) and recorded under subsection ~~(e)~~, (d), the officer shall certify to the county auditor, **according to a schedule agreed upon by the county treasurer and the officer**, a list of the **unpaid** liens ~~that remain unpaid according to a schedule agreed upon by the county treasurer and the officer~~ for collection with the next cycle's property tax installment. The county and its officers and employees are not liable for any material error in the information on the list.

~~(e)~~ (f) **This subsection applies to a county not described in subsection (e).** Using the lists and instruments prepared under subsection ~~(b)~~ (c) and recorded under subsection ~~(e)~~, (d), the officer shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection ~~(e)~~, (d), certify to the county auditor a list of the **unpaid** liens ~~that remain unpaid~~ for collection in



1 **with the next May installment of property taxes.** The county and its  
 2 officers and employees are not liable for any material error in the  
 3 information on this list.

4 ~~(f)~~ **(g)** The officer shall release any recorded lien when the  
 5 delinquent fees, penalties, service charges, and recording fees have  
 6 been fully paid. The county recorder shall charge a fee for releasing the  
 7 lien in accordance with IC 36-2-7-10.

8 ~~(g)~~ **(h)** On receipt of the list under subsection (e) **or (f)**, the county  
 9 auditor of each county shall add a fifteen dollar (\$15) certification fee  
 10 for each lot or parcel of real property on which fees are delinquent,  
 11 which fee is in addition to all other fees and charges. The county  
 12 auditor shall immediately enter on the tax duplicate for the  
 13 municipality the delinquent fees, penalties, service charges, recording  
 14 fees, and certification fees, which are due not later than the due date of  
 15 the next **cycle's** installment of property taxes. The county treasurer  
 16 shall then include any unpaid charges for the delinquent fee, penalty,  
 17 service charge, recording fee, and certification fee to the owner or  
 18 owners of each lot or parcel of property, at the time the next cycle's  
 19 property tax installment is billed.

20 ~~(h)~~ **(i)** After certification of liens under subsection ~~(e)~~ **(f)**, the officer  
 21 may not collect or accept delinquent fees, penalties, service charges,  
 22 recording fees, or certification fees from property owners whose  
 23 property has been certified to the county auditor. This subsection does  
 24 not apply to a county containing a consolidated city.

25 ~~(i)~~ **(j)** If a delinquent fee, penalty, service charge, recording fee, and  
 26 certification fee are not paid, they shall be collected by the county  
 27 treasurer in the same way that delinquent property taxes are collected.

28 ~~(j)~~ **(k)** At the time of each semiannual tax settlement, the county  
 29 treasurer shall certify to the county auditor all fees, charges, and  
 30 penalties that have been collected. The county auditor shall deduct the  
 31 service charges and certification fees collected by the county treasurer  
 32 and pay over to the officer the remaining fees and penalties due the  
 33 municipality. The county treasurer shall retain the service charges and  
 34 certification fees that have been collected, and shall deposit them in the  
 35 county general fund.

36 ~~(k)~~ **(l)** Fees, penalties, and service charges that were not recorded  
 37 before a recorded conveyance shall be removed from the tax roll for a  
 38 purchaser who, in the manner prescribed by section 32(d) of this  
 39 chapter, files a verified demand with the county auditor.

40 ~~(l)~~ **(m)** A board may write off a fee or penalty under subsection ~~(a)~~  
 41 **(b)** that is for less than forty dollars (\$40).

42 SECTION 8. IC 36-9-25-11, AS AMENDED BY P.L.168-2009,



SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 11. (a) In connection with its duties, the board may fix fees for the treatment and disposal of sewage and other waste discharged into the sewerage system, collect the fees, and establish and enforce rules governing the furnishing of and payment for sewage treatment and disposal service. The fees must be just and equitable and shall be paid by any user of the sewage works and, **except as otherwise provided in an ordinance described in subsection (l)**, the owner of every lot, parcel of real property, or building that is connected with and uses the sewage works of the district by or through any part of the sewerage system. This section applies to owners of property that is partially or wholly exempt from taxation, as well as owners of property subject to full taxation.

(b) The board may change fees from time to time. The fees, together with the taxes levied under this chapter, must at all times be sufficient to produce revenues sufficient to pay operation, maintenance, and administrative expenses, to pay the principal and interest on bonds as they become due and payable, and to provide money for the revolving fund authorized by this chapter.

(c) Fees may not be established until a public hearing has been held at which all the users of the sewage works and owners of property served or to be served by the works, including interested parties, have had an opportunity to be heard concerning the proposed fees. After introduction of the resolution fixing fees, and before they are finally adopted, notice of the hearing setting forth the proposed schedule of fees shall be given by publication in accordance with IC 5-3-1. After the hearing the resolution establishing fees, either as originally introduced or as amended, shall be passed and put into effect. However, fees related to property that is subject to full taxation do not take effect until they have been approved by ordinance of the municipal legislative body or, in the case of a district described in section 3(b)(2) of this chapter, under section 11.3 of this chapter.

(d) A copy of the schedule of the fees shall be kept on file in the office of the board and must be open to inspection by all interested parties. The fees established for any class of users or property served shall be extended to cover any additional premises thereafter served that fall within the same class, without the necessity of hearing or notice.

(e) A change of fees may be made in the same manner as fees were originally established. However, if a change is made substantially pro rata for all classes of service, hearing or notice is not required, but approval of the change by ordinance of the municipal legislative body



is required, and, in the case of a district described in section 3(b)(2) of this chapter, approval under section 11.3 of this chapter is required.

(f) If a fee established is not paid within thirty (30) days after it is due, **the board may recover, in a civil action in the name of the municipality,** the amount, together with a penalty of ten percent (10%) and a reasonable attorney's fee ~~may be recovered by the board~~ from:

(1) the delinquent user; or

(2) **the** owner of the property;

~~served in a civil action in the name of the municipality: subject to any ordinance described in subsection (l).~~

(g) **Except as otherwise provided in subsection (h) or in an ordinance described in subsection (l),** fees assessed against real property under this section also constitute a lien against the property assessed. The lien attaches at the time of the filing of the notice of lien in the county recorder's office. The lien is superior to all other liens except tax liens, and shall be enforced and foreclosed in the same manner as is provided for liens under IC 36-9-23-33 and IC 36-9-23-34.

(h) A fee assessed against real property under this section constitutes a lien against the property assessed only when the fee is delinquent for no more than three (3) years from the day after the fee is due.

(i) In addition to the:

(1) penalties under subsections (f) and (g); ~~and or~~

(2) **alternative penalty available under** section 11.5 of this chapter;

a delinquent user may not discharge water into the public sewers and may have the property disconnected from the public sewers.

(j) The authority to establish a user fee under this section includes fees to recover the cost of construction of sewage works from industrial users as defined and required under federal statute or rule. Any industrial users' cost recovery fees may become a lien upon the real property and shall be collected in the manner provided by law. In addition, the imposition of the fees, the use of the amounts collected, and the criteria for the fees must be consistent with the regulations of the federal Environmental Protection Agency.

(k) The authority to establish a user fee under this section includes fees to recover the costs associated with providing financial assistance under section 42 of this chapter. A fee that is:

(1) established under this subsection or any other law; and

(2) used to provide financial assistance under section 42 of this chapter;





is considered just and equitable if the project for which the financial assistance is provided otherwise complies with the requirements of this chapter.

**(I) For purposes of this subsection, "municipal legislative body" refers to the legislative body of each municipality in the district, in the case of a district described in section 3(b)(2) of this chapter. The municipal legislative body may adopt an ordinance under this chapter to provide for one (1) or more of the following with respect to property occupied by someone other than the owner of the property:**

**(1) That fees for the services rendered by the sewerage system to the property are payable by the person occupying the property. At the option of the municipal legislative body, the ordinance may include any:**

**(A) requirement for a deposit to ensure payment of the fees by the person occupying the property; or**

**(B) other requirement to ensure the creditworthiness of the person occupying the property as the account holder or customer with respect to the property;**

**that the municipal legislative body may lawfully impose.**

**(2) That the fees for the services rendered by the sewerage system to the property are payable by the person occupying the property only if one (1) of the following conditions is satisfied:**

**(A) Either the property owner or the person occupying the property gives to the board written notice that indicates that the person occupying the property is responsible for paying the fees with respect to the property and requests that the account or other customer or billing records maintained for the property be in the name of the person occupying the property. At the option of the municipal legislative body, the ordinance may provide that a document that:**

**(i) is executed by the property owner and the person occupying the property;**

**(ii) identifies the person occupying the property by name; and**

**(iii) indicates that the person occupying the property is responsible for paying the fees assessed by the board with respect to the property;**

**serves as written notice for purposes of this clause.**

**(B) The account or other customer or billing records**



1           **maintained by the board for the property otherwise**  
2           **indicate that:**  
3           **(i) the property is occupied by someone other than the**  
4           **owner; and**  
5           **(ii) the person occupying the property is responsible for**  
6           **paying the fees.**  
7           **(3) That fees assessed against the property for the services**  
8           **rendered by the sewerage system to the property do not**  
9           **constitute a lien against the property, notwithstanding**  
10           **subsection (g), and subject to any requirements or conditions**  
11           **set forth in the ordinance under subdivision (1) or (2).**



### COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 53, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 53 as introduced.)

Committee Vote: Yeas 9, Nays 0

Senator Merritt, Chairperson

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### COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 53, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1.5-5-29, AS ADDED BY P.L.131-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 29. (a) Subsections (c), (d), and (e) do not apply to a city that before January 1, 2005, adopted an ordinance establishing procedures for the collection of unpaid user fees under this chapter through the enforcement of a lien.

(b) Fees assessed against real property under this chapter constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (c) and (d), the lien attaches when notice of the lien is filed in the county recorder's office under section 30 of this chapter.

(c) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If property is conveyed before a lien is filed, the department shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not more than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(d) A lien attaches against real property occupied by someone other

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than the owner only if the department notifies the owner ~~within not later than~~ twenty (20) days after the time the user fees ~~became~~ become sixty (60) days delinquent. ~~However, the department must give notice to the owner only if the owner has given the department written notice of the address to which to send notice.~~ A notice sent to the owner under this subsection must be sent by certified mail, return receipt requested, or an equivalent service permitted under IC 1-1-7-1 to:

- (1) the owner of record of real property with a single owner; or
- (2) at least one (1) of the owners of real property with multiple owners;

at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice of the delinquency, or to another address specified by the owner, in a written notice to the department, at which the owner requests to receive a notice of delinquency under this subsection.

(e) The department shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

SECTION 2. IC 8-1.5-5-30, AS ADDED BY P.L.131-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 30. (a) The board may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days. **However, in the case of property that is occupied by someone other than the owner, this subsection does not relieve the department of its duty under section 29(d) of this chapter to notify the owner not later than twenty (20) days after the time user fees become sixty (60) days delinquent.**

(b) Except as provided in subsection (k), the board shall enforce payment of fees imposed under this chapter. As often as the board determines necessary in a calendar year, the board shall prepare either of the following:

- (1) A list of the delinquent fees and penalties that are enforceable under this section. The list must include the following:
  - (A) The name of the owner of each lot or parcel of real property on which fees are delinquent.



(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(c) An officer of the board shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall mail by certified mail, or by another delivery service providing proof of delivery, to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. A service charge of five dollars (\$5), which is in addition to the recording fee charged under this subsection and under subsection (e), shall be added to each delinquent fee that is recorded.

(d) Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the board shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection (c), certify to the county auditor a list of the **unpaid** liens ~~that remain unpaid~~ for collection ~~in with~~ the next May **installment of property taxes**. The county and its officers and employees are not liable for any material error in the information on this list.

(e) The board shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

(f) Upon receipt of the list under subsection (c), the county auditor of each county shall add a fifteen dollar (\$15) certification fee for each lot or parcel of real property on which fees are delinquent. The fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the district the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next May installment of property taxes. The county treasurer shall include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

(g) After certification of liens under subsection (d), the board may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor.



(h) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

(i) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the district. The county treasurer shall retain the service charges and certification fees that have been collected and shall deposit them in the county general fund.

(j) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 29(e) of this chapter, files a verified demand with the county auditor.

(k) A board may write off a fee or penalty under subsection (a) that is less than forty dollars (\$40).

SECTION 3. IC 34-57-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. This chapter applies to:

(1) any controversy existing between two (2) or more parties which might be the subject of a suit at law, except as otherwise provided in section 2 of this chapter; **and**

**(2) arbitration under IC 36-4-3-21.1 concerning services provided by a municipal utility to properties located outside the corporate boundaries of the municipality.**

SECTION 4. IC 36-4-3-21.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 21.1. (a) This section applies if:

**(1) one (1) or more contracts were entered into under section 21(a)(1) of this chapter between:**

**(A) the executive and an administrative agency of a municipality; and**

**(B) the owners or lessees of properties located outside the corporate boundaries of the municipality;**

**concerning the provision of municipal utility services in the area in which the properties referred to in clause (B) are located;**

**(2) the contracts have expired;**

**(3) the area in which the properties referred to in subdivision (1)(B) are located has not been annexed into the municipality; and**



- (4) the parties have not agreed:**
  - (A) to an extension of the contracts referred to in subdivision (1); or**
  - (B) to enter into new contracts under section 21(a)(1) of this chapter.**
- (b) In a situation described in subsection (a):**
  - (1) municipal utility services to the properties referred to in subsection (a)(1)(B) may not be terminated, except for nonpayment of the compensation due under subdivision (2); and**
  - (2) as a condition of continuing to receive municipal utility services, the owners or lessees of the properties referred to in subsection (a)(1)(B) must continue to pay the rate charged for the municipal utility services under the expired contracts, including any payment or contribution of money to the municipality provided for in the expired contracts under section 21(a) of this chapter;**
- for the period specified in subsection (c)(1) or until the occurrence of one (1) of the events set forth in subsection (c)(2).**
- (c) The municipal utility services shall continue to be provided to the properties referred to in subsection (a)(1)(B) under the terms set forth in subsection (b):**
  - (1) for a period of two (2) years from the date of expiration of the contracts, if none of the events set forth in subdivision (2)(A) through (2)(C) occurs within that period; or**
  - (2) until one (1) of the following occurs:**
    - (A) The executive and administrative agency of the municipality and the owners or lessees of the properties referred to in subsection (a)(1)(B) enter into a new contract under section 21(a)(1) of this chapter.**
    - (B) The area in which the properties referred to in subsection (a)(1)(B) are located is annexed into the municipality.**
    - (C) Subject to subsection (e), arbitration of the matter is initiated under subsection (d).**
- (d) At any time within the period referred to in subsection (c)(1):**
  - (1) the executive and administrative agency of the municipality; and**
  - (2) the owners or lessees of the properties referred to in subsection (a)(1)(B);**
- may initiate arbitration of the differences preventing the parties**



from entering into a new contract under section 21(a)(1) of this chapter. The arbitration shall be conducted under IC 34-57-1 by an arbitrator mutually chosen by the parties, and the award made by the arbitrator must establish reasonable and just terms of a new contract between the parties under section 21(a)(1) of this chapter, considering all relevant factors. If either party fails or refuses to enter into a new contract under section 21(a)(1) of this chapter according to the terms of the award, the other party may commence legal action to enforce the award under IC 34-57-1-13.

(e) If arbitration is initiated under subsection (d) before the expiration of the period referred to in subsection (c)(1), but the arbitration is not concluded before the expiration of the period set forth in subsection (c)(1), the municipal utility services shall continue to be provided to the properties referred to in subsection (a)(1)(B) under the terms set forth in subsection (b) until the arbitrator makes the award and the parties enter into a new contract under section 21(a)(1) of this chapter according to the terms of the award."

Page 3, line 35, delete "copy of a rental agreement, a lease, or a" and insert "**document**".

Page 3, line 36, delete "contract".

Page 4, delete lines 16 through 42, begin a new paragraph and insert:

"SECTION 4. IC 36-9-23-32, AS AMENDED BY P.L.113-2010, SECTION 153, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 32. (a) **Except as otherwise provided in an ordinance described in section 25(f) of this chapter,** fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 (**repealed September 1, 1981**) constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not more than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be





expensed as a bad debt loss.

(c) **Except as otherwise provided in an ordinance described in section 25(f) of this chapter**, a lien attaches against real property occupied by someone other than the owner only if the utility ~~notified~~ **notifies** the owner ~~within not later than~~ **within not later than** twenty (20) days after the time the utility fees ~~became become~~ **become** sixty (60) days delinquent. ~~However, the utility is required to give notice to the owner if the owner has given the general office of the utility written notice of the address to which the owner's notice is to be sent.~~ A notice sent to the owner under this subsection must be sent by certified mail, return receipt requested, or an equivalent service permitted under IC 1-1-7-1 to:

- (1) the owner of record of real property with a single owner; or
- (2) at least one (1) of the owners of real property with multiple owners;

at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice **of the delinquency, or to another address specified by the owner, in a written notice to the utility, at which the owner requests to receive a notice of delinquency under this subsection.** The cost of sending notice under this subsection is an administrative cost that may be billed to the owner.

(d) The municipality shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees."

Page 5, delete lines 1 through 19.

Page 5, line 42, delete "owner and for which" and insert "**owner**".

Page 6, delete lines 1 through 2.

Page 6, line 3, delete "property,".

Page 10, line 36, delete "copy of" and insert "**document**".

Page 10, line 37, delete "a rental agreement, a lease, or a contract".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 53 as printed January 24, 2014.)

WOLKINS, Chair

Committee Vote: yeas 7, nays 4.

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